

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

Keith A. Smith, and
Britta L. Smith,

Plaintiffs,

v.

BlueCross BlueShield of
Minnesota,

Defendant.

Case No. 3:22-cv-00618

NOTICE OF REMOVAL

Defendant Blue Cross and Blue Shield of Minnesota (hereinafter “Defendant” or “BCBS”)¹ states as follows:

1. An action was commenced by service of the Summons and Complaint on the registered agent for BCBS on September 30, 2022, entitled *Keith A. Smith and Britta L. Smith v. BlueCross BlueShield of Minnesota*, venued in the Circuit Court for the State of Wisconsin, Douglas County, Case No. 2022CV000221. Plaintiff mainly alleges in the Complaint that Defendant breached his health insurance contract by denying Plaintiff’s claim for insurance benefits. Plaintiff’s claim is based on a BlueAccess Small Employer Plan that is a health insurance policy (the “Policy”) BCBS issued to Plaintiff’s employer, to fund the employer’s employee welfare benefit plan (the “Plan”) which provided health insurance for eligible employees. Plaintiff’s Complaint seeks recovery against BCBS for Policy benefits.

¹ Defendant was incorrectly named in the Complaint as BlueCross BlueShield of Minnesota.

2. The above-described action is one in which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1331 and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441(a).

3. All of the allegations of the Complaint against Defendant arose pursuant to an employee welfare benefit plan, thus bringing the cause of action under the auspices of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.* Pursuant to ERISA, §§ 502(e)(1) and (f), 29 U.S.C. §§ 1132(e)(1) and (f), the district courts of the United States have original jurisdiction over all claims and actions brought under ERISA, without regard to the amount in controversy or the citizenship of the parties.

4. Because this action arises pursuant to the laws of the United States in a matter over which this Court has original jurisdiction, the action “may be removed by the [Defendant] to the district court of the United States for the district and division embracing the place where such action is pending” regardless of whether the Complaint affirmatively pleads a claim arising under ERISA. 28 U.S.C. § 1441(a); *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58 (1987).

5. In addition, to the extent that Plaintiff’s causes of action against Defendant arise from state law, they are entirely preempted under § 514(a) of ERISA, 29 U.S.C. § 1144(a). *Pilot Life Insurance Company v. Dedeaux*, 481 U.S. 41 (1987).

6. Removal is timely under 28 U.S.C. § 1446(b), which allows Defendant 30 days from the earlier of service or receipt of Plaintiff’s Complaint to request removal. The Summons and Complaint were served upon Defendant on September 30, 2022.

7. Attached as **Exhibit A** is a true and correct copy of Plaintiff's Summons and Complaint. Defendant has not otherwise appeared in this action. No further proceedings have been had therein, and trial has not yet commenced.

8. Also attached as **Exhibit B** is a copy of the Notice of Filing of the Notice of Removal, which is being filed in the Circuit Court for the State of Wisconsin, Douglas County.

9. By filing the instant Notice of Removal, Defendant does not waive, and fully reserves, all defenses it may have, including but not limited to defenses of lack of personal jurisdiction, lack of subject matter jurisdiction, and failure to state a claim upon which relief may be granted.

10. Written notice of this Notice of Removal will be provided to Plaintiff's counsel by service of this document on Plaintiff's counsel.

11. Defendant, BCBS, respectfully requests that the United States District Court for the Western District of Wisconsin accept this Notice of Removal and that it assume jurisdiction of this cause and issue such further orders and processes as may be necessary to bring before it all parties necessary.

Dated: October 28, 2022

Respectfully submitted,

NILAN JOHNSON LEWIS PA

By: /s/ William D. Hittler

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2022, I electronically filed the foregoing Notice of Removal with the Clerk of the United States District Court for the Western District of Wisconsin, using the CM/ECF system with a true and correct copy being served via mail delivery to:

Garrett M. Gondik
GONDIK LAW, S.C.
1215 Belknap Street
Superior, WI 54880

/s/ William D. Hittler

William D. Hittler